



U.S. Department of Justice
Civil Division, Federal Program Branch
1100 L St. NW, Washington, DC 20005

Anna L. Deffebach
Trial Attorney

Tel: (202) 993-5182
Email: anna.l.deffebach@usdoj.gov

April 7, 2022

By ECF

The Honorable Ann M. Donnelly
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Haller, et al. v. Department of Health and Human Services, et al.*, No. 2:21-cv-07208

Dear Judge Donnelly,

Defendants respectfully inform the Court of their intention to file a motion under Rule 12 in conjunction with Defendants' opposition to Plaintiffs' Motion for a Preliminary Injunction (ECF 25). Defendants' Motion to Dismiss will defend the constitutionality of the No Surprises Act, and the arguments presented in the motion will overlap substantially with the legal issues discussed in the briefing on the Preliminary Injunction motion. Defendants request that, in order to accommodate the consideration of a motion to dismiss together with the preliminary injunction motion, the Court excuse the pre-motion conference requirement set forth in this Court's individual practice rules. Defendants have conferred with Plaintiffs' counsel, and Plaintiffs' counsel do not consent to waiving the pre-motion conference.

Additionally, Defendants request that this Court issue a revised scheduling order permitting Defendants to file a reply brief in support of their Motion to Dismiss, not to exceed 10 pages, in advance of this Court's hearing on the two motions. Defendants also understand that one or more parties may seek to participate in this action as *amici curiae*, and request an adjustment of the briefing schedule that would accommodate these filings and also afford Plaintiffs the opportunity to respond to the *amici*. Defendants also respectfully request that the Court reschedule the hearing that is currently set for May 3, 2022 so that briefing on the two motions could be completed in advance of the hearing. A short delay in the hearing would not prejudice Plaintiffs, given that they challenge the constitutionality of provisions of the No Surprises Act that have been in effect since January 1, 2022.

In light of the complex constitutional, statutory, and regulatory issues in this case, and their national importance, Defendants also request an enlargement of the page limits for briefing in this case. Defendants propose that they be afforded an additional 15 pages (amounting to 40 pages total) for their combined Memorandum in Opposition to Plaintiffs' Motion for a Preliminary Injunction and in Support of Defendants' Motion to Dismiss, and that Plaintiffs be afforded the same number of pages for their combined Opposition to Defendants' Motion to Dismiss and Reply in Support of Plaintiffs' Motion for a Preliminary Injunction.

A summary of Defendants' proposed briefing schedule and page limitations is set forth below:

	Deadline	Page Limit
Defendants' Memorandum in Opposition to Plaintiffs' Motion for a Preliminary Injunction and in Support of Defendants' Motion to Dismiss	April 19, 2022	40 pages
Briefs of <i>amici curiae</i>	April 26, 2022	
Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss and Reply in Support of Plaintiffs' Motion for a Preliminary Injunction	May 3, 2022	40 pages
Defendants' Reply in Support of Defendants' Motion to Dismiss	May 10, 2022	10 pages
Hearing	At the Court's convenience	

In the event that the Court is inclined to hold a pre-motion conference, Defendants respectfully request that the Court defer the briefing schedule with respect to the preliminary injunction motion, so as to avoid duplicative briefing on the two motions.

We thank the Court for its attention to this matter.

Sincerely,

/s/

Anna L. Deffebach